

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**



**FREMONT POLICE ASSOCIATION
AND
CITY OF FREMONT**



**TERM OF AGREEMENT
JULY 1, 2009 – JUNE 30, 2011**

**CITY OF FREMONT
FREMONT POLICE ASSOCIATION
2009-2011**

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ARTICLE 1 – ADMINISTRATIVE

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into between the representatives of the CITY OF FREMONT, CALIFORNIA (hereinafter referred to as the “City”) and representatives of the FREMONT POLICE ASSOCIATION (hereinafter referred to as “Association”) to provide for the wages, hours, and other terms and conditions of employment of employees in the classes of Police Sergeant and Police Officer.

All male pronouns used in this MOU shall be understood to also include the female gender.

SECTION 2: RECOGNITION

The City recognizes the Fremont Police Association as the exclusive representative for the purposes of establishing wages, hours and other terms and conditions of employment for full-time employees in the classified service who are employed in the classes of positions of Police Officer and Police Sergeant, as well as position classifications that may be added or deleted by mutual agreement in writing between said Association and the City’s Employee Relations Officer.

SECTION 3: STATE, FEDERAL, AND LOCAL LAW COMPLIANCE

This Memorandum of Understanding complies with the provisions of Section 3500 et seq., of the Government Code of the State of California, and Chapter 4.5, Title 2, of the Fremont Municipal Code, in that the Employer and Employee representatives did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

SECTION 4: NO DISCRIMINATION

The City and the Association agree that each shall not discriminate in any aspect of employment or membership based on political affiliation, race, religious creed, color, national origin, ancestry, sex, marital status, sexual orientation, age (over 40), medical condition or physical disability.

SECTION 5: CITY RIGHTS

The City reserves, retains and is vested with any management rights not expressly granted to the Association by this Agreement, the Personnel Rules or the Employer-Employee Relations Policy. These City rights include but are not limited to the right to:

- 5.1 Determine and modify the organization of City government and its constituent work units.
- 5.2 Determine the nature, standard, levels and mode of delivery of City services.
- 5.3 Determine the methods, means, number and kind of personnel by which services are provided.
- 5.4 Impose discipline subject to applicable law and the provisions of this Understanding.
- 5.5 Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons subject to the Personnel Rules.

Nothing in this Section shall relieve the City of its obligation to meet and confer on the impact of the exercise of rights enumerated in this Section.

SECTION 6: CITY COUNCIL APPROVAL

It is expressly understood that this Memorandum of Understanding is of no force or effect until approved by the City Council of the City of Fremont.

SECTION 7: EXISTING BENEFITS CONTINUED

Except as provided herein, this Memorandum of Understanding does not modify existing benefits established by resolution and/or Ordinance. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Memorandum of Understanding.

This Memorandum of Understanding constitutes the full and complete agreement between the parties on all matters within the scope of representation. This agreement supersedes previous memoranda between the parties, except as specifically referred to herein. Any City ordinance, resolution, rule, or regulation inconsistent herewith is superseded by the terms of the Agreement. For the term of this Agreement, each party hereto waives the right to request of the other any change in the provisions of this Agreement, any existing City ordinance, resolution, rule or regulation, or any other term or condition of employment falling within the scope of representation, and each party hereby unqualifiedly waives the right to request the right to negotiate thereon; provided, however, that should the City desire to propose revisions or amendments to the presently existing Personnel Ordinance and/or Personnel Rules or Regulations, and/or Employee Relations Procedure, the City may require of the Association that it meet and

confer thereon prior to any proposed revisions or amendments being adopted, on either an individual or a “task force” (i.e., all recognized City employee organizations) basis. Nothing contained herein shall preclude the City from such meet and confer, or amending or revising the Personnel Ordinance and/or the Personnel Rules and Regulations, and/or employee relations procedures.

SECTION 8: TERM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter referred to as “Understanding”) incorporates all modifications regarding wages, hours, and other terms and conditions of employment. This Understanding shall be effective as of July 1, 2009 and shall terminate June 30, 2011.

SECTION 9: VALDITY OF MEMORANDUM

Should any Article, Section, or portion thereof of this Memorandum of Understanding be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specified Article, Section, or portion thereof directly specified in the decision, and the remainder of this Memorandum of Understanding shall not be affected. The parties shall meet and confer regarding the replacement of any Article, Section or portion thereof found invalid in an attempt to replace the Article, Section or portion thereof with new language reflecting the original intent.

SECTION 10: ORGANIZATION BUSINESS

The President of the Association shall be allowed time off with pay when approved by the Municipal Employee Relations Officer (City Manager), or his/her designee (Police Chief) for the purpose of conducting Association business. It shall be the responsibility of the employee to advise his/her supervisor of the expected absence from regular duties for the conduct of Association business. With respect to the meet and confer process, three (3) Association representatives shall be the maximum number of employees who will be allowed concurrent time off without loss of compensation. The Association shall submit the names of all such employee representatives to the Municipal Employee Relations Officer.

The employee representatives shall request release time from their supervisors in advance of leaving their work assignments to attend meet and confer sessions. Approval of release time shall not be unreasonably denied provided, however, that this section shall not adversely affect Association benefits established by existing custom or practice.

SECTION 11: AMERICANS WITH DISABILITIES ACT

It is the City’s intent to comply fully with the requirements of the Americans with Disabilities Act including, but not limited to, providing reasonable accommodation to employees with disabilities.

ARTICLE 2 – SALARIES AND OTHER COMPENSATION

SECTION 12: SALARIES

12.1 There shall be no salary increase during the term of this MOU.

LONGEVITY PAY

12.2 Police Officers and Police Sergeants who have completed 19 years of service with the City of Fremont shall receive an additional 2.5% of current base pay.

12.3 Police Officers and Police Sergeants who have completed 24 years of service with the City of Fremont shall receive an additional 2.3% of current base pay.

12.4 Police Officers and Police Sergeants who have completed 26 years of service with the City of Fremont shall receive an additional 4.6% of current base pay.

12.5 Police Officers and Police Sergeants who have completed 27 years of service with the City of Fremont shall receive an additional 2.3% of current base pay.

12.6 Police Officers and Police Sergeants who have completed 28 years of service with the City of Fremont shall receive an additional 1.2% of current base pay.

SECTION 13: CALL BACK

Whenever an employee is unexpectedly ordered by the supervisor to return to duty following the termination of his/her normal work shift and departure from the work location because of unanticipated work requirements, he/she shall receive a minimum payment equivalent to two (2) hours of overtime pay.

SECTION 14: ACTING PAY

14.1 An employee who has been specifically assigned in writing by the Chief of Police or designated representative and who, pursuant to such assignment, does perform the full range of duties and responsibilities of a position in a higher class for more than forty (40) cumulative work hours within the same fiscal year shall be paid at the first step of the higher class or five percent (5%), whichever is greater for all service at the higher rank, retroactive to the first day of such service.

14.2 After completing one full shift in an acting capacity, each full hour served thereafter in an acting capacity, as defined above, shall count toward the satisfaction of the minimum number of hours specified in Section 14.1.

14.3 After completion of the minimum number of hours specified in Section 14.1, payment shall be made to such employees each time they serve in an acting capacity for each hour. However, if it is apparent at the start of such service that

it will continue beyond the minimum number of hours specified in Section 14.1, the Department Head or designee may authorize payment to commence immediately.

- 14.4 Assignment of employees to serve in an acting capacity, as defined above, shall be based upon methods determined by the sole discretion of the Chief of Police.
- 14.5 Nothing in this section shall limit management's authority to assign employees temporarily to a position of a higher class for the purpose of providing training in the work of the position. Such temporary training assignment shall not constitute service in an acting capacity, as defined above, and shall not create entitlement to acting pay.
- 14.6 Additional compensation shall not apply to employees assigned to a modified duty assignment pending recuperation from an industrial or non-industrial injury or illness.

SECTION 15: ON-CALL INVESTIGATOR

Police Officers, or such other personnel as may be assigned, shall receive, in addition to their monthly salary, One Hundred Dollars (\$100.00) for each full week when assigned to and actually performing on-call investigator duties during normal off duty hours.

Whenever an individual who is assigned to and does perform on-call investigator duties, performs such assignment for less than seven (7) days within a week, payment for such duties will be at the rate of Fourteen Dollars and twenty-nine Cents (\$14.29) for each full day of assigned and performed on-call investigator duties.

Employees assigned as on-call investigator shall comply with the terms and conditions of such assignment as are established by the department and should such an employee fail to respond to a properly transmitted call to duty, the employee shall forfeit the One Hundred Dollar (\$100.00) payment for that week of assignment.

Since Employees can use on-call time for their own pursuits, wear beepers and/ or trade on-call shifts, on-call shall not be treated as "hours worked" for purposes of calculating overtime. Since these hours are for "on-call" hours, they should not be allocated to straight time hours to compute the "regular rate."

SECTION 16: OVERTIME AND WORK SCHEDULES

It is the desire of the parties to this Memorandum of Understanding to comply with the provisions of the Fair Labor Standards Act in all regards.

16.1 DEFINITIONS

- 16.1.1 Overtime is defined as either (a) hours worked in excess of the Employee's normal schedule or shift; or (b) hours worked constituting overtime as defined by the Fair Labor Standards Act. "Hours worked" is defined pursuant to the FLSA and generally includes time that the employee is performing services that are controlled or required by the Chief of Police or his/her designee.
- 16.1.2 Work Day/Shift: For purposes of this Section a "work day/shift" is defined as the number of hours to which each person is assigned on a regular daily basis, i.e., 8, 9, 10 or 11 hour shift.
- 16.1.3 Work Schedule shall mean the number of consecutive days an employee is on his/her work shift and the number of consecutive days an employee is off-duty within the work period.
- 16.1.4 Work Period shall mean the regular recurring period of work of 28 consecutive days which remains fixed regardless of how many hours are worked in the period before overtime is paid under the provisions of the 7(k) exemption of the Fair Labor Standards Act (FLSA).
- 16.1.5 Detective shall mean an employee who receives Specialist Pay as a Detective as described in Section 19.1 of the Memorandum of Understanding.
- 16.1.6 Administrative staff shall mean Police Officers or Police Sergeants assigned to units within the Police Department other than the Community Policing Patrol Teams.
- 16.1.7 When Overtime is Paid: Whenever overtime is due, the Employee will be paid 1.5 times his or her "regular rate" provided, however, that the Employee will not be paid twice for overtime that is both FLSA overtime and MOU overtime.
- 16.1.8 Community Policing Patrol Teams shall mean the operating unit of the Police Department with responsibility for routine preventative patrol, responding to calls for service and conducting criminal investigations. Excluded from this definition are employees assigned to specialized units operated and coordinated by Division Commanders.
- 16.1.9 Investigative Services Division shall mean the Investigations Unit of the Police Department with responsibility for investigation of crimes against persons and property.

- 16.1.10 Regular Rate of Pay is defined pursuant to the FLSA. In accordance with the FLSA, the regular rate will include acting pay, specialty pay, educational incentive pay, and similar payments.

16.2 WORK SCHEDULE FOR COMMUNITY POLICING PATROL TEAMS

- 16.2.1 Employees assigned to the Community Policing Patrol Teams shall have a regular work schedule not to exceed 171 hours within the work period of 28 days.

The work schedule rotation is based on an eight-day cycle with each employee working four (4) consecutive days of eleven (11) hour work shifts followed by four (4) consecutive days off. The eight-day cycle will advance the employee's workday and days off one day for every cycle. The cycle will repeat every eight (8) weeks. In thirteen (13) twenty-eight (28) day FLSA pay periods (one year), each employee will work 182 eleven-hour regular patrol shifts totaling 2002 hours. Employees shall work an additional seventy-eight (78) hours during the thirteen (13) twenty-eight (28) day FLSA pay periods for a total work year of 2080 hours as follows:

- a. Fifty-five (55) hours of training.
- b. Two (2) eleven (11) hour regular patrol shifts or equivalent hours as determined by the department.
- c. One (1) hour of personal uniform and equipment maintenance.

- 16.2.2 Employees assigned to work in the Community Policing Patrol Teams shall have a 50-minute meal period included within their work shift.

- 16.2.3 Employees assigned to work in the Street Crimes Unit who work four (4) days per week ten (10) hours per day shall have a 50 minute meal period included within their work shift.

- 16.2.4 Employees assigned to work as a Detective in the Investigative Units shall have a 60-minute meal period included within their work shift. If the Community Policing Patrol Teams work schedule is terminated pursuant to Section 16.2.6 below, employees assigned to work as Detectives will cease having a 60-minute meal period within their work shift on termination of the Community Policing Patrol Teams shift schedule.

- 16.2.5 The parties agree to meet from time to time as necessary to discuss the effectiveness and efficiency of the Community Policing Patrol Teams shift schedule. The City shall continue to determine shift configurations and the starting time of work shifts based on the needs of the Police Department. Work shift starting times may be altered to meet staffing needs.

16.2.6 The Community Policing Patrol Teams shift schedule will be subject to periodic evaluations by the City. The results of the periodic evaluations will be provided to the Association. Before a change in the shift schedule is implemented, the parties will meet and confer and attempt to reach agreement on the shift schedule. If the parties fail to reach agreement, Community Policing Patrol Teams staff shall revert to the 9/5 shift schedule utilizing a fourteen (14) day FLSA cycle.

16.2.7 Shift sign ups shall be for a one-year assignment with a maximum of three (3) consecutive years on the same shift. Officers may extend their assignment up to an additional two (2) years. Such extensions will be granted on a case-by-case basis and only upon the affirmative recommendation by the employee's supervisor and concurrence by the Watch Commander and Division Commander for each option year requested. Sign ups for the one-year shifts will be accomplished as soon as practical, but no later than March 31st. Primary vacation sign ups shall be completed concurrently with each shift sign up. This MOU does not reset determinations of consecutive shift selections from prior years.

The department reserves the right to transfer employees in the event a work group is reconfigured due to operational necessity, restructuring or reallocation of resources, as well as, for performance and/or disciplinary-related reasons at any time.

16.2.8 Employees assigned to work in an administrative assignment shall have a 60-minute meal period within their work shift and the City reserves the right to implement procedures to ensure that such employees are available to respond to emergency calls.

16.3 GENERAL CONDITIONS

16.3.1 Overtime compensation (when requested by the employee in cash, rather than in compensatory time off) shall be paid in the paycheck covering the period in which the overtime was earned. The Association recognizes that it will not always be possible to process over-time payments earned at the end of the pay period for payment in the paycheck covering the period, and should such a case arise, payment will be made no later than the next subsequent paycheck.

16.3.2 Comp Time. The City agrees to maintain a voluntary compensatory time off "CTO" bank with the following maximum accruals:

a. 240 hours (160 hours worked) for Officers and Sergeants other than School Resource Officers (SRO's) and DARE Officers; and

b. 480 hours (320 hours worked) for SRO's and DARE Officers.

Employees may elect to receive overtime compensatory time off in lieu of cash.

Employees will be required to irrevocably elect, prior to working the overtime, whether they wish to receive cash for the overtime or accrue the value of the overtime in a Compensatory Time Off Bank.

Employees will not be able to cash out Compensatory Time Banks, other than at termination of employment. Once accrued overtime is banked as CTO, the employee may only access the CTO by taking time off.

16.3.3 Overtime, as defined above, shall be paid to the employee, either in cash or in compensatory time off (CTO), at the employee's option, under the following conditions:

- a. When an employee is required to report for duty to fill an assignment other than an employee's regularly assigned shift.
- b. Employees who are required to attend departmental meetings while off duty, for which the employee is designated to a committee, or for any other reason, shall receive overtime at 1.5 times their regular rate of pay.
- c. When an employee is assigned to attend City-approved training which is in addition to the regularly scheduled work day/shift, the employee is eligible for paid overtime for that period of time which is in excess of the employee's regularly scheduled work day/shift.
- d. When an employee works in excess of 147 hours in a 24-day work period, the employee is eligible for FLSA overtime pay to the extent that the employee has not already been paid MOU overtime for those same hours. Effective August 1, 1999, when an employee works in excess of 171 hours in a 28-day work period, the employee is eligible for FLSA overtime pay to the extent that the employee has not already been paid MOU overtime for those same hours.

16.3.4 An employee who has been injured on duty and who is on a leave of absence with pay under Labor Code Section 4850 and who is required to attend court, school, training or any other departmental function in excess of the normal hours of his/her work day shall receive no additional compensation other than the full payment received for IOD status.

SCHOOL RESOURCE OFFICER (SRO) WORK SCHEDULES:

16.3.5 SRO's will be assigned a work schedule of five (5) days a week, nine and one-half (9½) hours per day. The purpose of this schedule is to replicate, as much as possible, the school's calendar and to ensure, to the extent

possible, that a SRO is available during the school's class and/or activity hours.

- 16.3.6 SRO's will not normally be scheduled to work the traditional three (3) weeks during the school year that school is closed (2 weeks during winter holidays/week for spring break) and SRO's will be scheduled off during Thanksgiving week via the use of comp time.
- 16.3.7 There may be instances of a holiday falling during a school week during the school year. When this occurs, the SRO's will adjust their work schedules to a 4-10 plan and the holiday will be a regularly scheduled day off.
- 16.3.8 There are school "in-service" days during the school year. The SRO's work schedule would remain on the schedule outlined in 16.3.5 above when "in-service" days occur during the school year. The following options are available at the discretion of the Police Chief, Division Commander, or the SRO's supervisor:
 - a. SRO's may be assigned to work on special projects or,
 - b. SRO's may be assigned to work patrol; or,
 - c. SRO's may be assigned to work at the Junior High School level (providing the Junior Highs are not also off on "in-service"); or,
 - d. SRO's may use accrued comp time, vacation or holiday time to take an "in-service" day off.
 - e. SRO's may adjust their work schedules to a 4-10 shift during the scheduled "in-service" week, with supervisor approval.
- 16.3.9 The parties share a mutual interest in maximizing the availability of compensatory time off (CTO) for SRO's. With this thought in mind, the parties agree to increase the maximum comp time accrual for SRO's from 240 hours to 480 hours. This increased comp time bank will apply to SRO's only. The parties agree it is their mutual expectation that the increased comp time bank will be used by SRO's for an extended absence during the summer months.
- 16.3.10 SRO's acknowledge their work schedules will include a minimum assignment of two (2) weeks of summer school annually at a local high school or junior high school.
- 16.3.11 SRO's acknowledge their work schedules will require working special events such as dances, graduation, sporting events, etc. Schedule adjustments will continue to be permitted if the SRO so elects in lieu of overtime or compensatory time.
- 16.3.12 Agreement to modify the SRO's work schedule is entered into for purposes of providing better service to community schools, enhancing the partnership

between the schools and the City of Fremont, strengthening relationships between students and the Fremont Police Department, attracting qualified Police Officers to serve as SRO's to provide a positive reduction in the crime rate associated with truancy, and to most effectively manage police resources.

16.3.13 The parties agree that if an SRO leaves the SRO Program at a time other than the beginning of a school year, accrued comp time over 240 hours will be handled in the following manner:

- a. Upon the SRO's Retirement or Resignation: Employees will be cashed out at their regular hourly rate of pay;
- b. Upon the SRO's Voluntary or Involuntary Transfer: Employees will be paid out to 240 hours.

16.4 POLICE CANINE OVERTIME

The parties recognize that care and grooming of canines can and will be performed on-duty. The parties agree that Police Officers assigned to the Canine Unit shall be authorized a maximum of two (2) hours per week for incidental care and grooming at the officer's home or other location other than Police Department facilities. The Police Officers assigned to the Canine Unit shall report use of these hours to their supervisor and the supervisor shall maintain accurate records for FLSA purposes. All "regular" Overtime and Callbacks exclusive of care, grooming, exercising, and matters related to the animal shall be covered by this Memorandum of Understanding. Police Officers assigned to the Canine Unit will not be eligible for two hours per week for incidental care and grooming while the canine is not under the care of the police officer for seven (7) or more consecutive days.

16.5 TRAINING AND SCHOOLS - ATTENDANCE AND TRAVEL

16.5.1 When an employee is assigned to a training course away from home, the location of the training course shall be determined as the employee's work location for the period of training involved. Overtime will be paid only if classroom time exceeds the designated work schedule. For example, in the event that the class is twenty-four (24) hours and the class hours are unequally distributed over three (3) work days, no overtime will be paid unless the total classroom hours exceed twenty-four (24) hours.

16.5.2 When an employee attends school away from home, his/her schedule during the time of training shall be considered an eight (8) hour workday and the Department may alter the employee's regularly scheduled days off to provide in-lieu days off if the school attended is on a regularly scheduled day off. When an employee attends a 40 hour, 5 day school or more, he/she

shall be considered to be on an 8-hour workday schedule and shall be entitled to two (2) days off that week and the employee's work schedule shall be automatically adjusted.

For example, an employee attending a 5 day school occurring Monday-Friday will receive the preceding Sunday and the succeeding Saturday off for that week. Employees attending school on their days off for less than a 5-day, 40 hour school will be given the same number of days off, on a day-for-day basis, within the same Fair Labor Standards Act (FLSA) cycle at straight time. If days off cannot be scheduled, the employee will receive compensation at the time and one-half (1.5) rate.

- 16.5.3 The Department shall use the most reasonably expeditious mode of transportation. If the employee opts for alternate forms of transportation (subject to department approval), the employee shall not receive overtime compensation for more than the time that would have been expended in the most reasonably expeditious mode and time of travel that would have been chosen by the Department.

16.6 WHEN OVERTIME IS NOT PAYABLE

- 16.6.1 Sick Time - An employee on day shift who is on sick leave during his/her regularly scheduled shift, but who appears in court, attends a meeting, or attends a training class for no more than the regularly scheduled work day will receive the normal straight-time compensation and any sick-time credits will be adjusted to reflect the actual hours off sick during the twenty-four (24) hour period.
- 16.6.2 Travel Time - Travel time, when required for travel out of the area, shall be paid at the straight-time rate.

SECTION 17: COURT APPEARANCES

Employees required to attend court during normal duty hours will receive no additional compensation.

- 17.1 When an employee is working and a court appearance is required either (1) immediately before his/her shift, or (2) at the start of his/her shift, or (3) immediately after the end of his/her shift, he/she shall not be eligible for any minimum number of hours under this Section, but shall be compensated for such overtime worked at 1.5 times the regular rate of pay.
- 17.2 An employee who appears in court on a regularly scheduled day off or on a vacation day approved prior to receipt of the subpoena will receive payment of four (4) hours minimum at 1.5 times the regular rate of pay. Except as provided in Section 17.7, below, an employee, after receiving a subpoena, may not take the

day off on the date of a court appearance and also receive one and one-half time credit during the same time period of his/her scheduled shift.

- 17.3 The court appearance minimum, where applicable, shall be four (4) hours, but said minimum shall not apply to employees appearing in court during their regular scheduled work hours or whose appearance is required less than four (4) hours prior to the start of their regularly scheduled work shift.
- 17.3.1 Court Appearances at the Conclusion of Shift. Appearances in court within one-half (1/2) hour following the end of the regular shift, regardless of the length thereof, shall be deemed a continuation of the shift and shall not be eligible for the 4 hour minimum.
- 17.3.2 Court Meal Breaks. When a court meal break exceeds one (1) hour, the amount of the meal break in excess of one (1) hour shall be counted towards the court appearance minimum.
- 17.4 In the event that an employee appears in court for a period of time prior to his/her regular shift and subsequently takes time off during a portion of the regular shift, the employee will nevertheless be entitled to his/her court time payable at 1.5 times the regular rate of pay.
- 17.5 If an employee receives a subpoena and subsequently takes sick leave for their regular shift on the date of the actual court appearance, he/she shall receive court time pay at 1.5 times the regular rate of pay for the court appearance, and the four-hour minimum shall be applicable to each such appearance. This shall not apply to employees whose normal work shift includes any portion of the normal court hours covered by Article 2, Section 16.6.1.
- 17.6 When an employee is scheduled to appear in court, for an afternoon court appearance on a day which is a regularly scheduled day off, or on a day which has been previously approved as a vacation day and his/her court appearance is canceled, the employee shall be notified, via assigned Department internal voice mail, of such cancellation no later than 11:30 a.m. on the day of the scheduled court appearance. It is the employee's responsibility to check his/her assigned Department voice mail at or prior to 11:30 a.m. on the scheduled court date. Should the employee not be notified of such cancellation on or before 11:30 a.m., the employee shall be entitled to and shall be paid for his/her court appearance for four (4) hours at 1.5 times the regular rate of pay.
- 17.6.1. If the employee is scheduled for a morning court appearance it is the responsibility of the employee to check their assigned Department voice mail at 6:00 p.m. the day before the court date to determine if the court appearance has been canceled. Should the employee not be notified of such cancellation on or before 6:00 p.m. the day prior to the court

appearance, the employee shall be entitled to and shall be paid for his/her court appearance for four (4) hours at 1.5 times the regular rate of pay.

- 17.7 No employee's shift shall be altered to prevent the payment of overtime or court time credits, except in the case of an employee who has taken leave time during his/her regular shift and who then works hours in excess of regular shift, in which case the amount of overtime which would otherwise be paid to the employee shall be reduced by the number of hours of leave taken during said shift and the balance shall be paid at 1.5 times the regular rate of pay. This section shall not apply to court time, and all transactions involving leave time and court overtime occurring on the same day will be processed separately.

SECTION 18: EDUCATIONAL INCENTIVE PAY

- 18.1 A permanent employee who has completed a total of three (3) or more continuous years of full-time service as a sworn officer or sergeant with the City, and who attains one of the educational standards in one of the levels listed below in addition to the requirements of the job classification, shall receive an additional amount of the regular base salary as Educational Incentive Pay (EIP), provided that the particular educational standard is in a field directly related to the employee's job. The amounts shown below are not cumulative.

Level 1:

AA or AS Degree	2.5%
60 Semester (90 Quarter) Units *	2.5%
Intermediate POST Certificate	2.5%

OR

Level 2:

BA or BS Degree	5.0%
120 Semester (180 Quarter) Units *	5.0%
MA or MS Degree	5.0%
POST Advanced Certificate	5.0%

* The City extends the continued right of only those employees hired into the unit prior to July 1, 1989 to achieve educational incentive pay on the basis of academic units as indicated above.

18.2 APPLICATION PROCESS FOR EDUCATIONAL INCENTIVE PAY

- 18.2.1 On the basis of POST certificates: Upon notification and receipt of documentation from the employee of qualifications, the Police Department will submit the payroll change within 30 days of the date the employee provided information to the Department.

18.2.2 On the basis of Degrees or Units: The employee is responsible for submitting a completed Educational Incentive Pay (EIP) application and required paperwork to the Police Department.

18.3 The above educational standards are not cumulative for determination of the percentage. A maximum of five percent (5%) shall be allowed for employees with three (3) to eight (8) years of continuous service with the City as a sworn officer or sergeant.

18.4 EFFECTIVE DATE FOR EIP PAY

18.4.1 On the basis of POST Certificates: EIP pay shall be effective the first of the month following submission of the application to POST by the Police Department, or the first of the month following the date of eligibility for the certificate, whichever occurs later. Employees acknowledge that failure by POST to approve the employee's application could result in overpayment and the need for repayment. If repayment is required, it will be at the same rate as it was disbursed, and over the same number of pay periods by way of payroll deduction.

18.4.2 On the basis of Degrees or Units: EIP pay shall be effective no earlier than the first day of the month in which the employee becomes eligible and submits an EIP application and required documentation to the Police Department.

18.5 After completion of eight (8) continuous years of service as a sworn Officer or Sergeant with the City, qualified employees will be eligible for an additional two and one-half percent (2½%) incentive pay. At no time may the total compensation for Educational Incentive Pay exceed 7½% of the employee's current pay step.

18.6 If, at any time, an employee is promoted to a position requiring the higher educational standard, the incentive pay received while in the lower position will terminate.

SECTION 19: SPECIALIST PAY

All Police Officers assigned to one of the following positions shall be paid an additional 5% of the salary for the term of their assignment:

19.1 Detectives

19.2 Administrative Officer

19.3 Personnel Officer

- 19.4 Computer Support Officer
- 19.5 Polygraph Officer
- 19.6 Court Liaison/Warrant Officer
- 19.7 Special Investigator to the Chief of Police
- 19.8 Field Training Officers (FTO's) while their assigned trainee is in any phase of field training
- 19.9 Canine Officer
- 19.10 Crime Scene Investigators
- 19.11 Semi-permanent Traffic Officers
- 19.12 Commercial Enforcement Officer, or
- 19.13 Any other position recommended in writing by the Police Chief and approved by the City Manager

Specialist Pay shall not apply to employees assigned to a modified duty assignment pending recuperation from an industrial or non-industrial injury or illness.

- 19.14 BILINGUAL PAY. Effective July 1, 2009, those Police Officers or Sergeants proficient in American Sign Language (ASL), Mandarin Chinese, Spanish or other language needed as determined by the Department, shall be eligible for a bilingual pay incentive of \$100 per month. In order to qualify for this incentive, Officers must be able to speak Mandarin Chinese or Spanish, or sign in ASL or other language needed as determined by the department. Officers must have skills sufficient to pass a certified competency language examination as determined by the Department.

Up to a maximum of 20 Police Officers or Sergeants are eligible under this program. Should the number of qualified officers exceed 20, award of this incentive pay shall be by seniority. Periodic re-testing may be required.

- 19.15 POLICE ADMINISTRATIVE OFFICER PAY. A sworn Police Officer or Police Sergeant who is routinely and consistently assigned to police administrative support to the Police Chief and the command staff may receive Police Administrative Officer Pay of up to ten (10%) of base pay. Police Administrative Officer pay must be recommended by the Police Chief and approved by the Human Resources Director.

Qualifying assignments include the supervision of the Animal Shelter or other similar assignments.

SECTION 20: UNIFORM ALLOWANCE

- 20.1 The City shall pay each employee fifteen hundred dollars (\$1,500) per year to compensate for the purchase and maintenance of uniforms and footwear as specified by the City. Uniforms shall include replacement of department-approved body armor (vest) after the initial issue of a department-approved vest, and all safety equipment, devices, and safety-related items of uniform not specified in Section 21 and required by any statute, ordinance, rule, regulation, or order of the federal or State government, or any local governmental entity, or any agency of the foregoing.

Payment shall be made in two equal installments, one on the first paycheck in January of each year to cover the preceding July through December, and the second on the first paycheck of July of each year to cover the preceding January through June.

Employees who leave City employment for any reason or who are no longer covered by this Understanding shall not be eligible for nor be paid the uniform allowance for any part of the six (6) month period (i.e., January through June, or July through December) during which departure from the City occurs. Any adjustments in such compensation due from either the City or the employee due to departure from City service shall be completed prior to the last date of coverage under this Understanding.

Employees shall adhere to the maintenance standards, uniform specifications and appearance standards previously established by the Department.

- 20.2 Newly hired police officers shall, as soon as is practical after the initial date of employment, receive five hundred dollars (\$500) for the purpose of reimbursing a portion of the initial uniform expense. Employees who, after terminating their employment with the City, are rehired, shall not be eligible for nor receive this initial payment upon being re-employed by the City.

Any employee who terminates employment, regardless of the reason, prior to completing twelve (12) months of service, shall be required to repay to the City a pro-rata amount of the reimbursement of initial uniform expense.

Such pro-rata amount shall be 1/12th of the amount specified above for each full month of the twelve-month period commencing from the date of employment for which service was not completed; such amount shall be deducted from the employee's paycheck.

On the first uniform allowance payment date following the completion of one (1) year of employment as a sworn police officer, such employees shall receive 1/12th of the applicable annual amount specified above for each completed month of service occurring between the end of the first year of employment and the commencement of the next payment period beginning January 1 or July 1. In no event shall such payment exceed one-half of the annual amount specified above.

SECTION 21: SAFETY EQUIPMENT

This article constitutes an exclusive declaration of rights and responsibilities of the parties with respect to safety equipment

Safety Equipment Provided: All employees covered by this Understanding shall, as soon as is practical after the initial date of employment, receive City furnished safety equipment listed under Category A. It is agreed that all sworn employees presently employed by the City have previously been furnished the safety equipment listed under Category A.

Category A

- One Regulation Semi-Auto Pistol
- One 26" Baton
- One 12" Baton
- One Breast Badge
- One Hat Piece
- Chemical Weapon
- Ammunition
- One Department Approved Vest (Body Armor) – Upon initial hire only
- One Air Purifying Mask

All safety equipment described in Category A shall remain the property of the City and shall be returned to the Police Chief upon request or upon the employee's termination of employment.

SECTION 22: MOTORCYCLE OFFICER UNIFORM PROVISION

Employees assigned to the position of Motorcycle Officer will be reimbursed for the expense of purchasing the following approved special motorcycle uniform and equipment: leather jacket, two pair Motorcycle Officer trousers; one pair motorcycle boots. Prior approval must be obtained from the Division Commander before purchasing any of the above listed equipment. The department will provide a helmet, gloves, and safety glasses.

SECTION 23: POLICE CANINE UNIT

- 23.1 A Police Officer assigned to the Canine Unit shall receive Specialist Pay as described in Article 2, Section 19.9 of this Memorandum of Understanding when assigned to the Canine Unit.
- 23.2 Except for the monthly training sessions, a Police Officer assigned to the Canine Unit shall work an eleven (11) hour shift, except in emergency situations as defined by the Chief of Police or his designee. Any callback assignment shall be deemed overtime and shall be paid according to Article 2, Section 16, of this Memorandum of Understanding and shall not reduce the Police Officer's regular eleven (11) hour shift. Further, Police Management reserves the right to reassign the Police Officer from the canine assignment at any time that is, in fact, necessary to management subject to the provisions of general law, Government Code Section 3300 et. seq., and the City of Fremont Administrative Rules and Regulations and this Memorandum of Understanding.
- 23.3 A Police Officer assigned to the Police Canine Unit shall assume the responsibility for the handling, training, and retraining of the canine assigned to the Officer, exclusive of the costs of required training done with the Training Contractor specified by the City.
- 23.4 The City shall pay all sums incurred by the Police Officer, when prior approval is obtained from management, for care and maintenance of the animal. In addition, City shall pay for routine and emergency veterinary maintenance and care.
- 23.5 A Police Officer shall provide services to the City as a canine handler for a minimum of three (3) years. However, the term of assignment of a Police Officer assigned to the Canine Unit shall terminate upon the occurrence of any of the following events:
- 23.5.1. Termination of Police Officer's employment with the City.
 - 23.5.2. Police Officer's suspension from City for thirty (30) or more days; or absence without leave for sixty (60) or more days.
 - 23.5.3. Police Officer's voluntary change in assignment to the extent that the services or use of a canine are not required.
 - 23.5.4. Police Officer's reassignment, upon request of employee or done by management, from the canine duty.
 - 23.5.5. Promotion of the Police Officer to the rank of Police Sergeant.
- 23.6 The term of assignment of a Police Officer assigned to the Canine Unit may terminate upon the occurrence of any of the following events:

23.6.1 Death of a canine.

23.6.2 Canine's disability to perform police work as determined by the Department.

23.6.3. Substandard performance by the Police Officer or Canine as documented by the Department.

ARTICLE 3 – LEAVES

SECTION 24: VACATION LEAVE PLAN EFFECTIVE JANUARY 1, 1994

This Vacation Leave Plan replaces all Vacation Leave Plans in effect prior to January 1, 1994. Effective January 1, 1994, the City established a New Vacation Leave Plan for employees in this bargaining unit which will be administered as follows:

24.1 DEFINITIONS

For the purposes of this Section, the following terms have the meanings stated below:

24.1.1 Old Vacation Leave Bank means all Vacation Leave accrued by the individual employee in this bargaining unit on or before December 31, 1993.

24.1.2 New Vacation Leave Bank means all Vacation Leave accrued by the individual employee in this bargaining unit on and after January 1, 1994.

24.1.3 Benefit Load means the premium, based on an additional cash factor relating to the cost of benefits, which may be liquidated on Old Vacation Leave accrued on and before December 31, 1993 upon termination of employment with the cash value of base salary. The Benefit Load for this bargaining unit is 33.305% of base salary.

24.2 NEW VACATION LEAVE ACCRUAL SCHEDULE

24.2.1 Effective July 1, 1999, all eligible employees shall earn vacation credits for continuous service based upon the following schedule based on an 8-hour day:

<u>Continuous Years of Service</u>	<u>Vacation Accrual Per Year</u>	<u>Hours Biweekly</u>
1 through 5 years	12 days	3.69 hours
6 through 9 years	15 days	4.62 hours
10 years	17 days	5.23 hours
11 through 14 years	20 days	6.15 hours
15 or more years	21 days	6.46 hours

- 24.2.2 Effective July 1, 2001, all eligible employees shall earn vacation credits for continuous service based upon the following schedule based on an 8-hour day:

<u>Continuous Years of Service</u>	<u>Per Year</u>	<u>Biweekly Vacation Accrual Hours</u>
1 through 5 years	12 days	3.69 hours
6 through 9 years	15 days	4.62 hours
10 years	17 days	5.23 hours
11 through 14 years	20 days	6.15 hours
15 through 26 years	21 days	6.46 hours
27 years	9 days	2.77 hours
28 years	3 days	0.92 hours
29 or more years	0 days	0.00 hours

For the purpose of vacation accrual, a workday is defined as the number of hours equivalent to 0.3846% of the total number of duty hours in the normal duty year (before deducting time off for vacation and holidays) of the employee involved.

- 24.2.3 The City will permit up to a maximum of two (2) Patrol Officers off per shift on primary vacation.
- 24.2.4 In order to facilitate the change to a fiscal year shift schedule, vacation sign-ups will be conducted by March 31st. Officers and Sergeants will make their first (primary) choice for a vacation period, based on seniority for their respective position. No more than two Officers will be allowed off per shift on vacation each day of the year, without the Watch Commander's approval. At the completion of this primary vacation sign-up period, there will be an opportunity to select a secondary vacation period based on seniority. No Officers or Sergeant can be "bumped" from their primary choice vacation period during the secondary vacation selection period.

Should any Officer or Sergeant decline to make a choice during the primary or secondary sign-up period, a "primary" vacation may still be declared. The Officer or Sergeant in this case must provide a minimum of 45 days' notice, and may choose any group of continuous days that no two Officers or a Sergeant have previously selected as a primary or secondary vacation. In order to accommodate this vacation sign-up process, and due to departmental staffing needs, the membership recognizes comp time and/or training assignments are subject to cancellation whenever a primary vacation is declared if shift minimums cannot be met. In the event an Officer or Sergeant waives the secondary vacation sign-up, any additional vacation time granted will be based on shift minimums and department needs.

24.3 MAXIMUM NEW VACATION LEAVE ACCRUAL LIMIT BEGINNING JANUARY 1, 1994

Effective January 1, 1994, employees shall be entitled to accrue a maximum New Vacation Leave accrual limit of two (2) times the individual employee's annual New Vacation Leave accrual in addition to the current year's accrual. No hours of New Vacation Leave will accrue above the maximum entitlement.

After December 31, 1993, the Old Vacation Leave accrual balance which is above the maximum accrual limit described above will not be liquidated for cash during employment. This Old Vacation Leave Bank is available for use as Vacation Leave and will be recorded separately from New Vacation Leave.

The City will draw down Vacation Leave accruals based on the "Last In First Out" method.

24.4 TERMINATION OF LIQUIDATION OF VACATION LEAVE DURING EMPLOYMENT

All liquidation of Old and/or New Vacation Leave during employment shall cease with the Old Vacation Leave accrued through December 31, 1993. No New Vacation Leave accrued on or after January 1, 1994 will be liquidated during employment.

24.5 LIQUIDATION OF OLD VACATION LEAVE AT TERMINATION

All Old Vacation Leave Bank hours earned on or before December 31, 1993 shall be liquidated at termination at an hourly rate based on the following formula:

The monthly base pay in effect at time of termination plus 33.305% of monthly base pay multiplied by twelve (months in the year) divided by 2080 (the number of work hours in a year).

New Vacation Leave accruals will not replenish or replace Old Vacation Leave accruals.

24.6 LIQUIDATION OF NEW VACATION LEAVE AT TERMINATION

All New Vacation Leave Bank hours earned on or after January 1, 1994 shall be liquidated at the hourly base rate in effect at termination.

24.7 An employee must take all accrued vacation and compensatory time before a request for leave of absence will be granted, except upon approval of the City Manager. See 25.4 below.

24.8 LIQUIDATION OF UNUSED VACATION HOURS AS OF 7-1-99

Effective July 1, 1999 and each July 1 thereafter, vacation hours accrued above the maximum limit shall be liquidated. Said liquidation shall be at the base hourly rate and will be up to an annual maximum as shown:

<u>Years of Continuous Service</u>	<u>Amount Per Fiscal Year</u>
1 through 5 years	40 hours
6 through 10 years	40 hours
11 through 14 years	60 hours
15+ years	60 hours

Any vacation hours accrued above the maximum limit, and thereafter accrued above the maximum liquidation schedule, shall be placed into a SABBATICAL/SICK LEAVE BANK.

- 24.9 Sabbatical/Sick Leave Bank is a bank having a maximum accrual of 1040 hours. These hours may be used by eligible employees for sick leave absences or, with the City Manager's approval, for a SABBATICAL having a duration of not less than 520 hours.

Employees will not be eligible to use SABBATICAL time until having reached 5 years of continuous service. SABBATICALS shall only be available once every seven (7) years and are granted subject to City Manager discretion and approval.

Any sick leave credited or used under this section shall not be considered as either sick leave used, nor as sick leave eligible for incentive payments, under MOU Section 26.

Accrued time in the Sabbatical/Sick Leave Bank shall not be compensated for in any manner other than discussed above in this Section 24.9.

SECTION 25: SICK LEAVE

- 25.1 Employees may use up to forty-eight (48) hours of earned sick leave per year for illness involving a member of their immediate family requiring the care and/or involvement of the employee. The Department may approve the use of additional sick leave to care for an immediate family member. If requested by the Department, medical certification stating the necessity for such care will be provided by the employee. "Immediate family" shall be defined as wife, husband, child, brother, sister, parent, parent-in-law, grandparents, and grandparents-in-law, except that a relative residing in the same household or a life partner residing in the same household who is not a legal spouse may, for the purposes of this section, be considered one of the immediate family. Refer to Section 31 regarding leave for family care purposes.

Sick leave granted due to an illness covered by this section shall be governed by the definition of a workday as one regularly scheduled work shift occurring or dated as occurring within one 24-hour day. This deduction will be on an hour-for-hour basis.

- 25.2 Employees may take sick leave as earned during the first six months of employment.
- 25.3 Sick leave, either with or without pay, shall not be used for any absence resulting from illness or injury arising out of and in the course of employment by the City of Fremont. If sick leave is claimed and awarded in error, the City shall be entitled to recover the amount of salary paid on account thereof. Such sick leave shall then be restored to the account of the employee upon recovery by the City of the total amount paid.
- 25.4 In the event of a non-industrial injury or illness, an employee may utilize any accrued leave to satisfy the first through the thirtieth (30) day of absence. An employee may continue to utilize accrued leave for the thirty-first (31) through sixtieth (60) day of absence or, at the employee's discretion, may request to be placed on unpaid leave of absence subject to the approval of the City Manager or designee.

SECTION 26: SICK LEAVE INCENTIVE PLAN

- 26.1 At the end of each fiscal year, employees shall receive payment for some of their accumulated but unused sick leave during the preceding year at a straight-time hourly rate, consisting only of the base salary rate, and any applicable educational incentive pay and specialist pay. The only days qualifying for sick payment shall be days #3, 4, 5, 6, 7, and 8 of the 12 days of accrued sick leave for that fiscal year.
- 26.2 Eligible employees must maintain a minimum balance of 160 hours sick leave to qualify for such payment.
- 26.3 Employees who terminate from City employment shall be paid for a pro-rata portion of the sick leave entitlement provided under this Section at a straight-time hourly rate, consisting only of the base salary rate, and any applicable educational incentive pay and specialist pay.
- 26.4 Effective July 1, 2001 and each July 1 thereafter, each employee who has completed 24 years of service with the City of Fremont as of that date will no longer be eligible to participate in the sick leave incentive plan. At that time, the sick leave accrual rate for such employees will change from 12 days per year to 6 days per year.

SECTION 27: BEREAVEMENT LEAVE

In the case of a death in the immediate family, employees may be granted bereavement leave of absence with pay for the workdays falling during the period from the time of death through the day of the funeral or one day after, not to exceed five (5) workdays. Bereavement leave will not be charged against accrued sick leave or vacation time. “Immediate family” is defined as wife, husband, child, brother, sister, parent or current parent-in-law, grandparent or current grandparent-in-law, except that a relative residing in and a member of the same household or a life partner residing in the same household who is not a legal spouse may be considered immediate family.

For the purpose of calculating bereavement leave, a workday is defined as one regularly scheduled work shift occurring or dated as occurring within one 24-hour day. Employees working four 10-hour or 11-hour shifts per week will receive up to four workdays’ bereavement leave.

SECTION 28: HOLIDAYS

28.1 The following days are designated as holidays, at the rate of 8 hours per day:

- 28.1.1 January 1
- 28.1.2 The third Monday in January, known as “Martin Luther King, Jr. Day”
- 28.1.3 The third Monday in February, known as “Presidents’ Day”
- 28.1.4 The last Monday in May, known as “Memorial Day”
- 28.1.5 July 4
- 28.1.6 The first Monday in September, known as “Labor Day”
- 28.1.7 November 11, known as “Veterans’ Day”
- 28.1.8 The Thursday in November appointed as “Thanksgiving Day”
- 28.1.9 The day following “Thanksgiving Day”
- 28.1.10 December 24
- 28.1.11 December 25
- 28.1.12 December 31
- 28.1.13 One (1) floating holiday accrued as of each July 1, to be taken on a working day mutually agreeable to the employee and the department.
- 28.1.14 Every other day appointed by the President or Governor and authorized by the City Manager, or designated by the City Council for a public fast, Thanksgiving, or holiday.

28.2 When a holiday falls on Sunday, the following Monday shall be observed or credited as a holiday; and when a holiday falls on a Saturday, the previous Friday shall be observed or credited as a holiday. The following special rules shall apply in connection with December 24-25 and December 31 - January 1 holiday periods: (1) When December 25 or January 1 falls on a Saturday, the previous Thursday and Friday shall be observed or credited as holidays; (2) when December 25 or January 1 fall on a Sunday, the previous Friday and the following Monday shall be observed and credited as holidays; (3) when

December 25 or January 1 fall on a Monday, the following Tuesday shall be observed and credited as a holiday.

- 28.3 To be eligible for holiday pay, an employee must be in a paid status on the regularly scheduled work day before and after the holiday.

SECTION 29: HOLIDAY TIME BANK

- 29.1 Effective with Council adoption of the contract in July, 1999 and each June thereafter, each employee shall elect whether they want to receive holiday time in biweekly pay (4.0 hours biweekly effective 8-1-99) or have annual holiday time of 104 hours credited to a holiday bank. The employee's holiday option shall remain in effect until changed by the employee.

Employees electing holiday payment as of July, 1999, shall cash out holiday time accrued from November 16, 1998 through July 31, 1999 on August 6, 1999. Thereafter, employees will be paid for 4.0 hours holiday time on each biweekly paycheck.

Employees electing to bank holiday hours shall accrue one (1) additional floating holiday (8 hours) as of July 1, 1999. Any hours remaining in the bank as of December of each year shall be cashed out.

Employees electing biweekly holiday payment who take a holiday off must use comp or vacation time for such holiday, subject to department approval. Employees with a holiday bank who take time off can use holiday time, comp time or vacation time, subject to department approval.

Each employee recognizes that arrangements for taking time off must reflect public need and service responsibilities of the department and that the final decision, with no employee appeal rights regarding the scheduling of such time off as provided by this Article, shall rest with the department.

The department retains the right to determine that certain employees, not needed for service responsibilities, shall take holidays off as they occur.

- 29.2 Effective the second pay period in June 2001, and each June thereafter, each employee shall elect whether they want to receive holiday time in biweekly pay (4.00 hours biweekly) or have annual holiday time of 104 hours credited to a holiday bank. The employee's holiday option shall remain in effect until changed by the employee.
- 29.3 No carry over into the following calendar year of such holiday time not taken shall be allowed. Any balance of such unused hours shall be compensated for by pay at the straight time hourly rate of the employee. This payment will be paid to the employee in the first paycheck issued in December each year. Any such time-off

to be taken between December 1 and 31 must be approved by the department prior to December 1.

- 29.4 Any employee who terminates employment shall only be entitled to the number of holiday time bank hours equivalent to the number of holidays (as listed in Article 3, Section 29) actually occurring on or between January 1 and the employee's last day of employment. Any unused balance of such hours shall be compensated for by pay at the employee's straight time hourly rate. Should such employee have taken more hours of holiday time off than provided for by this section, the employee will be required to repay the City for all hours taken in excess of the number of entitled hours. The amount of repayment required shall be deducted from the employee's check.
- 29.5 Any holiday occurring as provided in Section 28.1.14 shall not be included in said holiday time bank but shall be compensated for by pay at the employee's straight time hourly rate.
- 29.6 An employee on leave without pay when a holiday occurs shall either have his/her holiday bank reduced by (8) hours for each holiday or shall not be paid for 4.0 hours holiday time, determined by the employee's election of how holiday time is treated.
- 29.7 Working on a Holiday: Those employees listed below in Section A, whose regularly scheduled work day falls on a Department holiday may, with supervisory approval, elect to work their regular assignment on the Holiday and avoid deducting holiday hours for that day. If any of the following employees works a partial day on said holiday, those hours not worked must be deducted in accordance with Section 29.1 above.

SECTION A

Detectives & Detective Sergeants	Special Investigator
Semi-permanent Traffic Officers	Traffic Sergeant
Internal Affairs Sergeant	Radio Sergeant
Personnel & Training Sergeant	Personnel Officer
Jail Sergeant	Computer Support Officer
Administrative Officer	Court Liaison Officer
Community Partnership Sergeant	
Any officer with prior approval of the Chief of Police	

Those employees listed below in Section B, whose regularly scheduled work day falls on a Department holiday may, with supervisory approval, elect to work a patrol shift on the holiday if the patrol watch commanders believe additional patrol members would be in the best interest of the Department. A patrol watch commander will post the number of slots and the shifts available approximately one week prior to the scheduled holiday. Sign up will be done on a first-come, first-serve basis, and will be done without regard to Department seniority.

SECTION B

School Resource Officers
D.A.R.E. Officers
Street Crimes Unit
Any Officer with prior approval of the Chief of Police

SECTION 30: ASSOCIATION RELEASE TIME

On July 1 of each year, the City shall establish a 100-hour bank for time off as may be needed by Association Officers or Members for Association business. With the approval of the Chief of Police, a reasonable extension of hours may be granted. Said bank shall not be carried over from one calendar year to the next calendar year. Requests for time off from this bank must be signed by the President of the Association or designee and are subject to current Department policy regarding compensatory or holiday time off.

SECTION 31: FAMILY CARE LEAVE

After twelve months and 1,250 hours of continuous service, employees may be provided with up to twelve (12) weeks unpaid leave in any 12-month period from the date leave commences providing such leave does not cause an undue hardship on the City. The twelve weeks of leave may consist of one or more periods of absence, without regard to whether such leave is granted in response to one or a series of requests.

Family care leave may be provided in the event of an employee's serious or chronic illness or the birth or adoption of a child or to care for a chronic or seriously ill immediate family member. For purposes of this section, immediate family member shall be defined as wife, husband, child under 18 years of age, brother, sister, parent, parent-in-law, grandparent and grandparents-in-law, except that a relative living in the same household, or a life partner residing in the same household who is not a legal spouse, may, for the purposes of this section, be considered one of the immediate family.

Employees taking family care leave will be returned to the same or comparable job with the same pay at the conclusion of their leave.

Family care leave shall not constitute a break in service for purposes of any employee benefit plan. Employees returning from leave shall return with no less seniority than accumulated on the date leave began.

The following provisions apply to Family Care Leave:

- A. Employees may use accrued leave time in connection with family care leave. However, use of sick leave shall be provided under the same regulations governing use of sick leave. Use of paid leave does not extend the maximum period of family care leave.

- B. Should both parents work for the City, leaves granted to both parents may be limited to an aggregate total of twelve weeks.
- C. An employee must provide reasonable advance notice if the leave is foreseeable. Requests for family care leave shall require the recommendation of the Department Head and approval of the City Manager.

ARTICLE 4 – INSURANCES

SECTION 32: HEALTH BENEFITS ALLOWANCE

- 32.1 The City shall secure and make available to all eligible employees, medical care, and dental insurance under the Alternative Benefits and Compensation Plan (ABC Plan). The ABC Plan is a “cafeteria plan” as defined in Section 125 of the Internal Revenue Code and eligible expenses are defined in the Plan document.
- 32.2 The City contribution for insurance and other benefit coverage available under the Alternative Benefits and Compensation Plan is known as the Health Benefits Allowance (HBA).
 - 32.2.1 Effective January 1, 2009, the Health Benefits Allowance shall increase up to a maximum of \$1234 per month but shall not exceed the Kaiser CA Bay Area/Sacramento family premium rate.

Effective January 1, 2010, the 2009 dental premium (\$134) will be added to the Health Benefits Allowance. The sum of the 2009 dental premium and the 2009 Health Benefits Allowance shall increase up to a maximum of \$1,436 per month.

Effective January 1, 2011, the Health Benefits Allowance shall increase up to a maximum of \$1,580.
- 32.3 In the event premiums and/or costs for the selected benefits exceed the amount in the Health Benefits Allowance, the balance will be paid by the employee through automatic pre-tax payroll deduction, as allowed under Internal Revenue Code Section 125. Money not used for the purchase of benefits under the Alternative Benefits and Compensation Plan will be paid to the employee in taxable cash.

Effective January 1, 2008, employees who waive medical coverage in accordance with the provisions established by the City and do not purchase medical benefits under the Alternate Benefits and Compensation Plan on January 1, 2008 will be eligible to receive a maximum of \$933 per month in taxable cash in-lieu of purchasing medical benefits. If an employee eligible for

\$933 per month in taxable cash subsequently elects to purchase medical coverage, said employee will be subject to a maximum of \$580 in taxable cash and will no longer be eligible, at any time, to receive \$933 per month in taxable cash in-lieu of purchasing medical benefits.

Effective January 1, 2008, employees who purchase medical benefits under the Alternate Benefits and Compensation Plan shall be eligible to receive up to a maximum of \$580 per month in taxable cash for money not used for the purchase of medical benefits under the Plan. Employees who subsequently elect to waive medical coverage and not purchase medical benefits under the Alternate Benefits Compensation Plan will continue to be subject to a maximum of \$580 in taxable cash in lieu of purchasing medical benefits.

- 32.4 The City's contribution as established above shall be the maximum amount required, and the City shall not be responsible for the contribution of any sum in addition to those established by the terms of this Memorandum of Understanding.
- 32.5 Except as provided in Section 32.6 below, the coverage, exclusions and limitations of the City sponsored plans are those in effect on July 1, 1999, for the purpose of description of said plans. As provided under the Public Employees' Medical and Hospital Care Act (PEMHCA), medical care benefits are provided through the Public Employees' Retirement System (PERS) medical plan.
- 32.6 Effective as provided herein, employees who elect coverage under PEMHCA may also elect coverage for a domestic partner to the extent permitted by and according to the procedures of PEMHCA Section 22873. The provision shall become effective on the first day of the month following the month in which the City files with PERS a certified copy of the City's resolution electing such coverage.

SECTION 33: RETIREE MEDICAL INSURANCE

- 33.1 The City shall continue to contribute \$150 per month toward reimbursement of retiree medical insurance premiums for Police Officers and Sergeants retired from the City prior to August 1, 1999.
- 33.2 Officers or Sergeants who were lateral hires from other agencies and who retire from the City of Fremont after August 1, 1999 will be given years of service credit for up to 10 years of sworn law enforcement service with other agencies in applying the formulas in Sections 33.4 and 33.5.
- 33.3 Effective January 1, 2002, for Police Officers and Sergeants who retired from the City prior to August 1, 1999 with 20 or more years of service, the City shall contribute an amount equal to the KHP premium for single-party coverage in effect on January 1, 2002 for reimbursement of retiree medical insurance premiums.

- 33.4 Police Officers and Sergeants retiring from the City of Fremont on or after August 1, 1999, shall receive the following amount per month for reimbursement of retiree medical insurance premiums:

Cumulative Years of Fremont Service at Retirement	Amount Per Month For each Year of Service	Total
0 through 14 years	\$0	\$0
15 through 19 years	\$6.50/mo. per year of completed service	15 \$ 97.50/mo. 16 \$104.00/mo. 17 \$110.50/mo. 18 \$117.00/mo. 19 \$123.50/mo.
20 through 24 years		KHP premium for single party coverage at the date of retirement
25+ years of service		KHP premium for two-party coverage at the date of retirement

- 33.5 The amount of City reimbursement shall not exceed the premium required for the retiree's particular level of coverage in the plan selected. Retirees must comply with the processes and procedures established by the City for verification of enrollment, cost and other required information to maintain their eligibility for reimbursement.
- 33.6 The retiree medical reimbursement amount described in Sections 33.1, 33.3 and 33.4 above shall be reduced by the CalPERS required employer portion of the premium if the retiree purchases insurance through the CalPERS plan.
- 33.7 To be eligible for retiree medical reimbursement, the employee must retire from the City of Fremont with 120 days of separation.
- 33.8 The Government Code sets forth a minimum contribution for employers who contract with CalPERS to provide medical insurance for retirees. The City will comply with the Government Code regarding the minimum contribution for medical coverage for those retirees enrolled in the CalPERS medical program. The retiree's medical coverage will not be affected when the employer's minimum contribution to the CalPERS medical program exceeds their maximum retiree medical reimbursement set forth in the applicable Memorandum of Understanding.

SECTION 34: DENTAL INSURANCE COVERAGE

- 34.1 Effective July 1, 2009, the City shall contribute up to \$143 per month per employee toward the cost of the Fremont Police Association's dental coverage with the Delta Dental insurance plan.

For the purpose of description of the plan, the coverages, exclusions, and limitations of the Fremont Police Association's Delta Dental insurance plan are those in force on January 1, 2009.

- 34.2 The Delta Dental Plan is administered by the Fremont Police Association. The City's sole obligation is to make timely payments to the Association. The normal rules of indemnity shall apply.
- 34.3 The Association shall forward said payment on behalf of all employees, regardless of Association membership or not.
- 34.4 Effective January 1, 2010, the City will assume administration of the dental plan. To the extent the plan continues to be offered by Delta Dental, employees will continue to be covered by the same dental plan design. If the same plan is no longer offered by Delta dental, the City and the Association will meet and reach agreement on the new plan design, which is comparable to the existing plan design.

Effective January 1, 2010, the 2009 Delta Dental premium shall be added to the Health benefits Allowance and the City contribution towards the cost of the Fremont Police Association's dental coverage with the Delta Dental insurance plan will cease.

Effective January 1, 2010, the City agrees to offer a retiree dental coverage to retirees from this bargaining unit as allowed under the coverage in affect in 2009. Retirees electing such coverage will pay for the premium through the carrier.

- 34.5 Once the 2011 dental plan rates are established, the City agrees to meet with the Association regarding the Association's continued participation in the City administered dental plan. The discussion will be to assess any adverse effect on the Association's group dental premium as well as any plan or provider changes as a result of being placed in the City administered plan. In the event that the Association and City cannot reach an agreement on continued participation, the Association may opt out of the City administered plan. The opt out must be noticed within ninety (90) days of the establishment of the 2011 rates, and the City will pay to the Association the per member amount identified in Section 32.2.1 (\$134).

SECTION 35: LIFE INSURANCE COVERAGE

The City shall continue to provide for all employees a fifty thousand dollar (\$50,000.00) group term life insurance program to be selected, administered and paid for by the City. The employee may choose to provide life insurance coverage to eligible dependents as provided by the group life insurance policy at his/her own cost.

SECTION 36: LONG-TERM DISABILITY/SALARY CONTINUATION PLAN

- 36.1 The City shall continue to contribute forty-eight dollars and sixteen cents (\$48.16) per month per employee toward the cost of the Fremont Police Association's Long-Term Disability (LTD) Plan in the Association's Insurance Trust. Effective January 1, 2010 the City contribution to the Association's trust shall increase to fifty-seven dollars and sixteen cents (\$57.16).
- 36.2 It is agreed and understood that the City shall not be held responsible or liable for any matters, including the determination and payment of benefits arising in the administration of this salary continuance insurance plan.
- 36.3 The Association shall forward said payment on behalf of all employees, regardless of Association membership or not.
- 36.4 Section 25.4 regarding LTD is herein incorporated by reference as if fully set forth.

ARTICLE 5 – RETIREMENT**SECTION 37: PERS CONTRACT AMENDMENTS**

The City agrees to continue its contract with PERS for the following retirement benefits:

- 37.1 Military service credit, as specified in Section 21024 of the Government Code with the eligible employee required to contribute both the employer's and employee's contributions and interest.
- 37.2 "One Year Highest Compensation" (Section 20042 of the Government Code) retirement benefit.
- 37.3 "Credit for Unused Sick Leave" (Section 20965 of the Government Code) retirement benefit.
- 37.4 The "Increased" and the "Third" levels to the existing '59 Survivor Benefit program in accordance with Sections 21572 and 21573 of the State Government Code.

- 37.5 The continuation of the Post-survivor allowance after remarriage in accordance with Section 21551 of the State Government Code.
- 37.6 The 3% at Age 50 (Section 21362.2 of the Government Code) retirement benefit formula.

ARTICLE 6 – MISCELLANEOUS

SECTION 38: STANDBY STATUS

Employees shall only be required to be on standby status when ordered by a court of law.

SECTION 39: TRAINING SCHEDULES

The Police Department shall endeavor to provide each employee with advance notice of the schedule for required training programs. Employees involved in such training shall be provided twenty-one (21) days notice prior to the commencement of the program. All possible notice shall be provided for those programs initiated as a result of mandated training legislation.

SECTION 40: DAYLIGHT SAVINGS TIME

For the purposes of payroll and scheduling, the annual change in hours created by changing from daylight savings time to standard time shall result in the following:

Shift workers on duty when standard time goes into effect will work an additional hour on their shift and be compensated at the overtime rate for that hour.

For the purposes of payroll and scheduling, the annual change in hours created by changing from standard time to daylight savings time shall result in the following:

Shift workers on duty when daylight savings time goes into effect will be allowed to continue working for what would be an additional hour at the employee's regular rate of pay or to take one hour of leave time (vacation time or comp. time) if they elect not to do so. If the employee elects to work the additional hour, that hour will not be credited towards any overtime pay.

SECTION 41: SHIFT CHANGE

Seven (7) calendar days notice shall be required when employees are rotated, reassigned, or transferred from a regularly scheduled shift to another shift, unless an emergency necessitates a change in rotation, assignment or transfer. "Emergency" shall include, but not be limited to, "the necessity of replacing employees absent from work

because of unanticipated and unavoidable illness, injury, or other unanticipated and unavoidable good causes.”

When permanent and long-term vacancies occur within the Community Policing Patrol Teams and transfer of an employee or employees between the A and B patrol shifts becomes necessary, the Department shall first seek volunteer(s) from the team identified by the Division Commander. If no volunteers are identified, the least senior officer from the team identified by the Division Commander may be subject to movement to another shift, watch, zone and/or slot as reasonably necessary. The Department will provide reasonable time off, but in no case less than forty-eight (48) hours, to avoid the working of back-to-back shifts if such a transfer becomes necessary.

SECTION 42: LUNCH PERIOD FOR SHIFT PERSONNEL

Employees on a 4-11 shift assignment will be entitled to a paid lunch period of fifty (50) minutes as part of their regular shift.

SECTION 43: REQUEST FOR CalPERS ACTUARIAL VALUATION

The City and the Association agree to request actuarial valuations from the California Public Employees’ Retirement System (CalPERS) to determine the cost of the following optional retirement benefits:

Section 21548 Pre-Retirement Optional Settlement 2 Death Benefit

Section 21574 Fourth Level of 1959 Survivor Benefits

The actuarial valuations will be requested by August 2008 in preparation for contract negotiations between the City and the Association in 2009. The request for the valuation is made to assist the parties in freely exchanging information during the 2009 collective bargaining process.

The City and the Association each agree to pay for one half of the fees required for the valuations. By agreeing to fund one half of the cost of the valuations, the City does not make either an express or implied endorsement of the optional benefits.

SECTION 44: SPECIAL EVENT NOTIFICATION

The City shall make every attempt to provide FPA members with a minimum of fourteen (14) calendar days’ notice prior to mandating members to work overtime created by special events.

Mandatory staffing or adjustments to shifts shall be made by seniority if the shifts cannot be filled on a voluntary basis. All FPA members shall be subject to special event mandatory staffing except for SRO’s, SACNET, Gang Task Force and On-call Investigators. Previously approved vacation and compensatory time off scheduled on special event dates shall not be subject to cancellation to achieve special event staffing.

ARTICLE 7 – GRIEVANCES AND APPEALS

SECTION 45: BINDING ARBITRATION

The Association and the City hereby agree that, unless earlier resolved under these procedures, the final and binding resolution of any Grievance available to an employee covered by the provisions of this Memorandum of Understanding shall be by arbitration. The City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of the arbitrators made pursuant to this procedure.

SECTION 46: GRIEVANCE PROCEDURE

46.1 PURPOSE OF THE PROCEDURE

- 46.1.1 To establish orderly procedures providing a method of communication between employees and management concerning matters which may be subject to grievance.
- 46.1.2 To provide that the grievance procedure shall be as informal as possible.
- 46.1.3 To provide that grievances shall be settled as promptly as possible and at the lowest possible level of the procedure.
- 46.1.4 To provide employees, individually or with a representative of their own choosing, and/or the Association, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure. Provided, however, that no individual shall be accorded any relief through the grievance/appeal procedure as to any prior action of any kind whatsoever directed specifically at his or her individual employment status unless he or she shall prosecute such a proceeding as a named party - whether or not joined with other parties.

46.2 MATTERS SUBJECT TO GRIEVANCE PROCEDURE

- 46.2.1 Grievances: For the purpose of this procedure, a “Grievance” shall be defined as any complaint or dispute concerning the interpretation or application of any ordinance, or any rule or regulation of the City or the Department governing personnel practices or working conditions, or the practical consequences of a City’s rights’, decision on wages, hours, and other terms and conditions of employment, or the interpretation or application of any of the provisions of the Memorandum of Understanding.
- 46.2.2 Exclusions
 - 46.2.2.1 The procedures set forth herein shall not apply in matters where other methods of dispute resolution have been specifically provided for in State or Federal law, such as, but not limited to, appeals of worker’s

compensation claims; claims made pursuant to the Fair Labor Standards Act (FLSA); unemployment insurance claims; or claims of employment discrimination based upon race, religious creed, sex, color, physical handicap, medical condition, age, national origin, political affiliation or marital status for which a remedy is provided by the California Fair Employment and Practices Act (Cal. Gov. Code Sec. 12900 et seq.), or Title VII (42 United States Code 2000e et seq.), except in cases where an employee contends his/her employment has been terminated in violation of said Acts or the City's existing policies against such discrimination.

SECTION 47: GENERAL

- 47.1 Nothing in these procedures shall be construed to prevent discussion or meetings between parties at any time to clarify the facts in order to conclude any matter as promptly as possible.
- 47.2 The time limitations established herein may be extended by mutual consent for valid reasons, such as legitimate absence of one or more parties or because of injury, illness, official obligations, or unavoidable personal obligations.
- 47.3 If the question of arbitrability of an issue is raised by either the employee, the Association, or the City, such questions shall be determined in the first instance by the arbitrator who shall, upon request of any party, make his/her determination prior to hearing the merits of the case.
- 47.4 If joined by the affected employee(s), the Association may initiate a grievance when the issue in dispute affects a member or members of the representation unit. Grievances initiated by the Association on behalf of an employee(s) must deal with the specific action(s) on which the grievance is based. Association initiated grievances shall be first submitted at the second step of the process and then proceed from that step if necessary.

SECTION 48: PROCEDURE

- 48.1 Informal Discussion: The affected employee, group of affected employees, or the Association may present a grievance orally to the immediate supervisor within ten (10) working days of the occurrence of the issue grieved or within ten (10) working days from such time as the employee or Association should reasonably have been aware of the occurrence
- 48.2 Formal Submission: Should the grievance remain unresolved within ten (10) days after oral presentation pursuant to Step 1, the employee or Association representative may submit the grievance in writing to the immediate supervisor within ten (10) additional working days. The written grievance shall make specific reference to the statute, ordinance, rule, regulation, or Memorandum of Understanding provision alleged to be controlling and to the proposed solution.

The supervisor shall render a decision in writing to the employee and/or Association representative within ten (10) working days after the formal submission of the grievance.

- 48.3 Appeal to Department Head: Should the grievance remain unresolved, the employee or Association representative may, within ten (10) working days after receipt of the supervisor's decision, submit the grievance in writing to the Department Head. The Department Head or Chief or his/ her designated representative shall respond to the grievance/appeal in writing within (10) working days after its receipt.
- 48.4 City Manager – Association Staff Representative: Should the grievance remain unresolved, the employee or Association representative may, within ten (10) working days after receipt of the Department Head's written response, submit the grievance in writing to the City Manager or his/her designee. The City Manager or his/her designated representative, shall meet as she/he deems appropriate, with the affected employee and with the assigned Association staff representative within twenty (20) working days of submission and attempt to resolve the dispute.
- 48.5 Alternative Grievance – Appeal Resolution: Any other dispute resolving mechanism may be substituted for the foregoing upon mutual agreement between the parties prior to invoking the arbitration provisions of this article. Should the decision appealed from, or the grievance arise from a decision of the City Manager, the steps described in sections 48.1 through 48.4 may be omitted by the employee(s), who may invoke arbitration pursuant to sub-paragraph 48.6, below.
- 48.5(a) Facilitated Mediation: Prior to submission of a grievance or appeal to arbitration, the parties may submit the grievance or appeal to non-binding interest-based facilitated mediation. The purpose of this mediation is to allow each party to present facts regarding the dispute and/or the process leading up to the submission and ask questions of the opposing party. The parties may also call witnesses and introduce evidence during the mediation.

Both parties must agree to use Facilitated Mediation, and must jointly select a mediator. If the parties cannot agree on a mediator, the provisions of Section 48.6 shall be followed for such selection. Both parties shall share all costs including the mediator's fees. No recording devices or court reporters shall be used during the facilitated mediation, and no formal transcripts will be prepared. Flip chart notes may be retained and/or transcribed.

The parties may not use any information presented and statements made at the mediation as evidence in any subsequent proceedings, and the mediator cannot be called as a witness in any subsequent proceedings. Although the parties are encouraged to participate in the facilitated interest-based mediation

without the assistance of counsel, attorneys are not prohibited. If any party will be represented by an attorney during the mediation, a minimum of ten days notice must be given to the other party.

Any statements by any party or witness shall not form the basis for an Internal Affairs investigation unless such statement or evidence indicates a criminal act has occurred or an offense has occurred which could result in the termination of an employee.

- 48.6 Arbitration Process: Should the grievance not be resolved to the satisfaction of either the Association or the City by Steps 1-5, either may request arbitration as the final step in the grievance process by notifying the other party of their intent to utilize the services of an arbitrator. Such notice shall be in writing and shall be provided to the other party within ten (10) working days from the date of the decision rendered under sub-paragraph 4 or 5 supra.

Upon notice of intent to arbitrate, the affected employee and the Association and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, a list of five available arbitrators shall be obtained from the State California Department of Industrial Relations or, if by mutual consent, from the American Arbitration Association. Any Party may require that all arbitrators on the list shall be attorneys. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list, then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available, then the affected employee and/or the Association and the City shall request another list or select an arbitrator through any other mutually agreed upon process.

- 48.7 Decision of the Arbitrator: The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of California Code of Civil Procedure Section 1280 et seq. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Memorandum of Understanding and shall not have jurisdiction to make any award which would not have authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto.

SECTION 49: MISCELLANEOUS PROVISION

- 49.1 All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.

- 49.2 Concurrent grievances alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- 49.3 The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena. On noticed application by the City, the arbitrator may order the Association to reimburse the City for its costs incurred in paying any City employee for time spent responding to a subpoena issued at the request of the Association or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.
- 49.4 The Association and the City agree to share equally all costs of arbitration (including, but not limited to, the arbitrator's fees and costs, the cost of court reporters, etc.), but shall be responsible for their own respective costs of making their presentation to the arbitrator, including, but not limited to, their own attorneys fees, expert witness fees, regular witness fees, etc.
- 49.5 If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.
- 49.6 While either the employee or the Association may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been initiated, no other grievance concerning the incident or action upon which the complaint is based may be initiated.
- 49.7 The Association, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

SECTION 50: DISCIPLINARY APPEALS

The Association and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any Appeal available to an employee covered by the provisions of this Memorandum of Understanding shall be by arbitration. In agreeing to this method of resolving Appeals, both parties understand and agree that the City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of the arbitrators made pursuant to this procedure.

50.1 PURPOSE OF THE PROCEDURE

- 50.1.1 To establish orderly procedures providing a method of communication between employees and management concerning matters which may be subject to appeal.
- 50.1.2 To provide that the appeal procedure shall be as informal as possible.
- 50.1.3 To provide that appeals shall be settled as promptly as possible and at the lowest possible level of the procedure.
- 50.1.4 To provide employees, individually or with a representative of their own choosing, and/or the Association, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure. Provided, however, that no individual shall be accorded any relief through the appeal procedure as to any prior action of any kind whatsoever directed specifically at his or her individual employment status unless he or she shall prosecute such a proceeding as a named party – whether or not joined with other parties.

SECTION 51: APPEALS

For the purpose of this procedure, an “Appeal” shall be defined as a complaint or dispute as to any disciplinary or punitive action directed specifically at an individual employee’s employment status and shall include:

- a. dismissal;
- b. demotion;
- c. suspension;
- d. reduction in salary;
- e. transfer imposed for punishment or to correct deficient performance.

SECTION 52: EXCLUSIONS

- 52.1 The procedures set forth herein shall not apply in matters where other methods of dispute resolution have been specifically provided for in State or Federal law, such as, but not limited to, appeals of worker’s compensation claims; claims made pursuant to the Fair Labor Standards Act (FLSA); unemployment insurance claims; or claims of employment discrimination based upon race, religious creed, sex, color, physical handicap, medical condition, age, national origin, political affiliation or marital status for which a remedy is provided by the California Fair Employment Practices Act (Cal. Gov. Code Sec. 12900 et seq.), or Title VII (42 United States Code 2000e et seq.), except in cases where an employee contends his/her employment has been terminated in violation of said Acts or the City’s existing policies against such discrimination.

- 52.2 Written reprimands may be appealed to the City Manager within ten (10) days of receipt. The City Manager or designee shall review the circumstances and render a written decision within fourteen (14) days of review. The decision of the City Manager/designee shall be final and conclusive.
- 52.3 Probationary employees who are rejected during probation shall have no right to appeal such action, except in cases where they allege that their rejection was predicated, in whole or in part upon their race, religious creed, sex, color, physical handicap, medical condition, age, national origin, political affiliation or marital status.

SECTION 53: GENERAL

- 53.1 Nothing in these procedures shall be construed to prevent discussion or meetings between parties at any time to clarify the facts in order to conclude any matter as promptly as possible.
- 53.1(a) Facilitated Mediation: Prior to submission of a grievance or appeal to arbitration, the parties may submit the grievance or appeal to non-binding interest-based facilitated mediation. The purpose of this mediation is to allow each party to present facts regarding the dispute and/or the process leading up to the submission and ask questions of the opposing party. The parties may also call witnesses and introduce evidence during the mediation.

Both parties must agree to use Facilitated Mediation, and must jointly select a mediator. If the parties cannot agree on a mediator, the provisions of Section 48.6 shall be followed for such selection. Both parties shall share all costs including the mediator's fees. No recording devices or court reporters shall be used during the facilitated mediation, and no formal transcripts will be prepared. Flip chart notes may be retained and/or transcribed.

The parties may not use any information presented and statements made at the mediation as evidence in any subsequent proceedings, and the mediator cannot be called as a witness in any subsequent proceedings. Although the parties are encouraged to participate in the facilitated interest-based mediation without the assistance of counsel, attorneys are not prohibited. If any party will be represented by an attorney during the mediation, a minimum of ten days notice must be given to the other party.

Any statements by any party or witness shall not form the basis for an Internal Affairs investigation unless such statement or evidence indicates a criminal act has occurred or an offense has occurred which could result in the termination of an employee.

- 53.2 The time limitations established herein may be extended by mutual consent for valid reasons, such as legitimate absence of one or more parties or because of injury, illness, official obligations, or unavoidable personal obligations.

- 53.3 If the question of arbitrability of an issue is raised by either the employee, the Association, or the City, such questions shall be determined in the first instance by the arbitrator who shall, upon request of any party, make his/her determination prior to hearing the merits of the case.

SECTION 54: PROCEDURE

The procedure for the pre-disciplinary meeting shall be as described by the Administrative Regulation.

- 54.1 Selection of Arbitrator: Should the employee or Association not be satisfied with the results of the pre-disciplinary meeting, the Association may request arbitration of the decision. Upon notice of intent to arbitrate, the Association and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, then a list of available arbitrators shall be obtained from the State of California Department of Industrial Relations or, if by mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available then the Association and the City shall request another list or select an arbitrator through any other mutually agreed upon process.
- 54.2 Decision of the Arbitrator: The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of California Code of Civil Procedure Section 1280 et seq. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Memorandum of Understanding and shall not have jurisdiction to make any award which would not have been authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto.
- 54.3 In any disciplinary appeal from a termination, suspension, reduction in pay, transfer, or demotion, any relief which the arbitrator may grant shall be limited to a recession of the action appealed from, a restoration of any lost pay and benefits, and, where the arbitrator deems it appropriate, the imposition of substitute discipline composed of a suspension without pay of not more than six (6) months, a reduction in pay, a transfer to an established position, a demotion, remedial training, or a combination of any or all of these forms of disciplinary action.
- 54.4 The Association and the City endorse the principle that disclosure of information relating to contemplated impositions of employee discipline may, in many instances, serve no public purpose and may be harmful to the City, the

Association, and the employee concerned. This endorsement of principle is not intended to create any enforceable rights on the part of any person or entity.

SECTION 55: MISCELLANEOUS PROVISIONS

- 55.1 All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- 55.2 Concurrent appeals alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- 55.3 The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance by him/her. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena. On noticed application by the City, the arbitrator may order the Association to reimburse the City for its cost incurred in paying any City employee for time spent responding to a subpoena issued at the request of the Association or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.
- 55.4 The Association and the City agree to share equally all costs of arbitration (including, but not limited to, the arbitrator's fees and costs, the cost of court reporters, etc.), but shall be responsible for their own respective costs of making their presentation to the arbitrator, including, but not limited to, their own attorneys fees, expert witness fees, regular witness fees, etc.
- 55.5 If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.
- 55.6 While either the employee or the Association may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been presented, no other grievance concerning the incident or action upon which the complaint is based may be initiated.
- 55.7 The Association, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

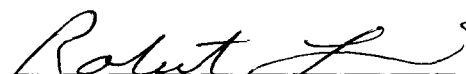
SECTION 56: JOINT LABOR MANAGEMENT COMMITTEE

The parties agree to continue the Joint Labor Management Committee meetings to discuss topics currently of interest to the parties or topics which emerge during the course of the contract. The Chief of Police and the Association will meet to discuss the JLMC framework. Discussion of topical areas by the JLMC does not replace the meet and confer process nor does it modify agreements set forth in the MOU. Issues of financial interest to the Association and/or the City are not topical areas for the JLMC.

AGREEMENT

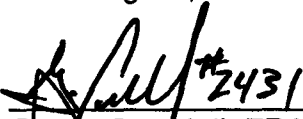
AGREEMENT

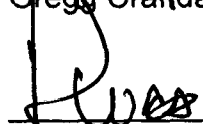
Executed this 29 day of July, 2009, by the Employer-Employee Representatives whose signatures appear below.



Rob Lanci, FPA President


Mark Dang, Director at Large


Mike Tegner, Director at Large


Gregg Crandall, FPA Member


Rockne Lucia, Attorney at Law
~~Rains, Lucia & Wilkinson, LLP~~

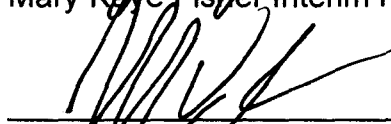
Rains Lucia Steen PC 

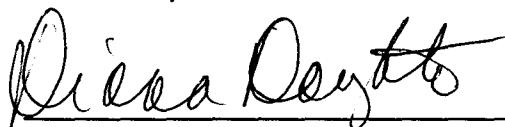

Fred Diaz, City Manager


Frank Grgurina, Police Captain


Mark Devine, Police Lieutenant


Mary Kaye Fisher, Interim HR Director


Jeff Kyle, Acting LR Manager


Diana Doughtie, Negotiator

Approved as to Form


Joan A. Borger
Assistant City Attorney

APPENDIX A

CITY OF FREMONT FREMONT POLICE ASSOCIATION CLASSIFICATION LIST

3350 POLICE OFFICER

3540 POLICE SERGEANT

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APPENDIX B

FORMULA FOR POSSIBLE MARKET ADJUSTMENT

Should the parties agree that the City conduct a salary survey for a possible market adjustment for the ranks of Officer and Sergeant, the following cities will be used: Alameda, Berkeley, Concord, Hayward, Milpitas, Palo Alto, Pleasanton, San Jose, San Mateo, Santa Clara, and Vallejo.

The survey shall determine the top step base salary (monthly equivalent) being paid for each classification. Any payments made by a survey city on behalf of the employee toward the 9% employee contribution to PERS shall be added to the base monthly pay, if not already included.

Upon completion of the survey, excluding Santa Clara, the average of the five highest paid agencies shall be determined.

The resulting survey average for Officer and for Sergeant will be compared to the step 5 base salaries of the respective classifications for the City of Fremont.

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**CITY OF FREMONT
FPA MOU
2009 – 2011**

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